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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 1:22-cv-21830-RKA

SIMON GERALD SULLENBERGER

pro se

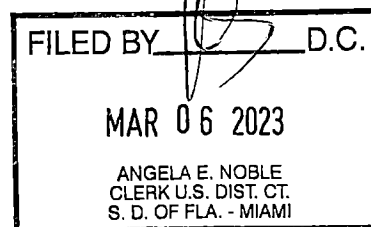
Plaintiff,

v.

CITY OF CORAL GABLES, a political
subdivision of the State of Florida; JORGE
PUGA, individually and in his capacity a
Police Officer for the City of Coral Gables;
NATALIE FLORES, individually and in her
capacity as a Police Officer for the City of
Coral Gables; JECABSEEL NUNEZ,
individually and in his capacity as a Police
Officer for the City of Coral Gables.

Defendants,

PLAINTIFFS MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANTS
MOTION TO DISMISS SECOND
AMENDED COMPLAINT



PLAINTIFFS MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS
MOTION TO DISMISS SECOND AMENDED COMPLAINT

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INTRODUCTION

The Plaintiff, SIMON GERALD SULLENBERGER, is a distinguished individual with an impressive record of community service and professional accolades of community service and professional achievements. He earned the rank of Eagle Scout and is a licensed New York State Firefighter and Emergency Medical Technician. Additionally, he has held the esteemed position of Chief and Alumna of the Coral Gables Fire Department Explorer Program. Throughout volunteering career, he has accumulated over 7000 hours of community service.

Sullenberger's civil action alleges assault, battery, false imprisonment, official misconduct, active concealment of official misconduct, intent to deceive, violations of §1983 and §1985, and malicious prosecution committed by: OFFICER NUNEZ and OFFICER FLORES. False imprisonment, official misconduct, active concealment of official misconduct, intent to deceive, violations of §1983 and §1985, and malicious prosecution by Lead Investigator OFFICER PUGA and THE CITY OF CORAL GABLES ("the City"). The aforementioned officers, while acting within the scope of their duty, violated clearly established law (Fla.stat.838.022(1)(a), 918.13(1)(b)) and committed perjury in the Arrest Affidavit and Supplemental Reports ("A-form") (Exhibit A), which were then submitted to the City's Attorneys, Mrs. Miriam Ramos ("Mrs. Ramos") and Mr. Israel Reyes ("Mr. Reyes"), and subsequently to the State Attorney's Office ("SAO") and Justice Advocate ("JA") Program for prosecution.

Sullenberger alleges that the A-form and Supplemental Reports are well written and carefully constructed documents, supported only by the accounts and testimony of Officer Nunez and Officer Flores. It is evident the Defendants collaborated to legitimize Sullenberger's arrest.

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Sullenberger's home surveillance ("CCTV") exonerated him and exposed Officer Nunez's and Officer Flores's willful actions, and willingness to perjure. Despite this evidence, Sullenberger was subjected to 3 years of prosecution. Officer Nunez and Officer Flores provided false testimony during their depositions, with intent to deceive, and Officer Puga admitted in deposition CCTV does not correspond with the A-form he prepared. Mrs. Ramos and Mr. Reyes reviewed the CCTV and inexcusably did not challenge the veracity of the Defendants' sworn statements. The City neglected to provide Brady Material of perjury to the prosecution. Instead, willfully suppressed said Brady Material and continued the prosecution of Sullenberger, causing significant continuous harm, emotional distress and irreparable harm to his reputation and character.

On or around March 2018, the SAO and the City utilizing the JA Program offered Sullenberger's counsel a verbal offer to drop his charges for not pursuing a civil action against the Defendants. Sullenberger refused to relinquish his due process right and was subsequently threatened with harsher charges and maximum mandatory sentencing. It appears the City's JA Program requires individuals to relinquish their due process rights to pursue civil action, conceivably violating 18 U.S.C. § 242 and possibly raising an Abuse of Purpose claim.

Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir. 1994), established that § 1983 liability requires an action pursuant to an official policy or custom that causes a constitutional violation. Sullenberger emphasizes that the City is accountable for the unconstitutional practices of the JA Program, which resulted in the malicious prosecution of Sullenberger. In support of this claim, Sullenberger cites *Phelan v. City of Coral Gables*, 415 So. 2d 1292, 1295 (Fla. 3d DCA 1982), which establishes that the State Attorney's filing of an information in a criminal prosecution does not inherently imply probable cause but rather provides reasonable grounds for prosecution. The Defendants are accused of willfully submitting falsified A-form with the deliberate intent of

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initiating a prosecution against Sullenberger to coerce him into waiving his civil lawsuit against the Defendants through the JA Program.

Absence integrity, the Defendants cannot rely on the fabricated A-form/incident reports/supplemental reports, false testimony and inferences in their favor to support their Motion to Dismiss. For over 13 months, the SAO and the City failed to provide material evidence that was necessary for Sullenberger defense. Sullenberger's counsel had to file a Motion to Compel Discovery to the SAO to release the evidence.

As evidenced by the ultimate dismissal of all charges by the SAO, Sullenberger's ab initio arrest was made without probable cause. It is evident, under the Obviousness Standard, that no reasonable jury could dispute this conclusion. Therefore, Sullenberger respectfully requests the Defendants' Motion to Dismiss the Second Amended Complaint ("SAC") be denied. In support of this request, Sullenberger submits the following:

BACKGROUND

On December 2, 2017, Sullenberger was arrested, his firearm seized and sustained injuries from Officer Nunez and Officer Flores. Charged with crimes he did not commit by the Defendants and the City's JA Program, emphasizing that the arrest and charges were a result of fabricated testimony, failure to investigate, failure to follow procedures, protocols, and abuse of power.

ARGUMENTS

The Defendants arguments on their motion to dismiss are **bold, underlined** and listed as: I, II, III... A. B. C... – followed by Sullenberger's position, a. b. c., 1) 2) 3)...

I. Dismissal with prejudice is required where Sullenberger's state and federal claims are time-barred. "Where, as in this case, it is apparent from the face of the complaint that the claim is time barred, a Rule 12(b)(6) dismissal with prejudice on statute of limitations grounds is appropriate." – False.

a. The Defendants' intent to deceive, active and fraudulent concealment (Equitable estoppel), ongoing serious harm, and official misconduct, including arrest based on fabricated probable

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cause and willful disregard for Sullenberger's civil rights, justify Tolling statute of limitations. Sullenberger criminal case, which took place during the COVID-19 Global Pandemic, lasted for 3 years, resulting in continuous harm to Sullenberger. The continuous harm rule may be applied to toll the statute of limitations and acknowledges that harm can occur over an extended period, and that the statute of limitations may not start until the harm has ended, which it will never.

b. Additionally, the City and Coral Gables Police Department ("CGPD") is actively and intentionally Tolling Internal Affairs ("IA") investigations. The intentional Tolling of IA investigations should allow for Equitable Tolling of the statute of limitations. Sullenberger, has not, through the exercise of reasonable diligence, obtained IA evidence of the obvious official misconduct by the Defendants.

c. Sullenberger has provided the Defendants with timely notice of these claims and Sullenberger's counsel was pursuing a state civil case on the same underlying elements.

d. There has been no showing of prejudice to the Defendants, and Sullenberger has acted with reasonable diligence and good faith in pursuing his claims.

A. Sullenberger's Federal Claims are barred by the statute of limitations. – False.

a. Sullenberger recently became aware of his permanently damaged FBI record causing serious harm to his ability to seek employment in the civil service career he has spent a majority of his life involved in with over 7,000 of community service in the Fire Department.

b. Ethical Worlds of Large-Firm Litigators: Preliminary Observations, 67 FORDHAM L. R EV . 709, 736 (1998). Plaintiff was falsely arrested for a crime he did not commit. The false arrest resulted in Plaintiff reputation being severely damaged, causing him to suffer from emotional distress and financial losses. The arrest caused Plaintiff to suffer serious harm, such as severe emotional distress and a damage to his reputation, the statute of limitations does not apply. The courts have stated that "the false arrest, accompanied by the loss of employment, and the stigma associated with arrest, constituted a serious harm." The statute of limitations does not apply in a false arrest case where the defamation of character is considered a serious harm to the Plaintiff.

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c. Because Sullenberger has suffered serious harm as a result of the Defendants ab initio arrest, including: harm to his reputation, loss of employment prospects, damaging FBI criminal record, significant emotional distress, serious injury, and continuous harm; the statute of limitations should not apply.

B. Sullenberger's state court action was not removed, it was dismissed. – False.

a. The Defendants appear to be implying that the case was dismissed in their favor, when in reality, Sullenberger dismissed the state court action because of unfair bias and initiated a new action in federal court, which has original jurisdiction. Sullenberger acknowledges the court's clarification [DE57] that the civil cover sheet error won't impact the SAC and respectfully requests the court treat his SAC as a new action; this will not prejudice the Defendants.

C. Counsel repeatedly projects an assumption in this case that the Plaintiff has not stated a claim. – False.

1) Sullenberger's claim are rooted in the Defendants' official misconduct, deliberate fabrication of evidence active concealment of official misconduct. Sullenberger verbally informed the Defendants, who were not visible, unidentifiable and in the dark, not to enter the property. Sullenberger could not confirm who was on the other side of the 7-foot bushes and the lack of police cars, arrival almost half an hour after a panic alarm, added to the confusion. Sullenberger quickly withdrew himself and his Shotgun from the immediate area and retreated backwards gaining a safe distance. Officer Nunez entered the property without permission, after being clearly instructed not to do so. Officer Nunez used Dr. Santamarina, Sullenberger's neighbor, as a human shield and put his life in a State Created Danger by pointing his gun directly at his back and or head area. Officer Flores called in "Homeowner with a shotgun" and Officer Nunez called in "QRU" (situation OK) to his dispatcher (Audio 17008314, 2000-2015 Hrs). Dr. Santamarina, Sullenberger, his mother and neighbors stated to the officers, multiple times, that

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Sullenberger was the resident. Officer Nunez's and Flores's unnecessary use of force resulted in severe injuries, lasting harm, and a gross violation of Sullenberger's civil liberty. Their failure to follow policy, de-escalate and obvious lack of training were contributing factors that lead to their use of excessive force and Sullenberger's subsequent arrest.

2) A response time of almost half an hour to a panic alarm is unacceptable. Any reasonable and prudent human would conclude no response was expected and would continue living. Sullenberger's civil action claims arise from the alleged assault, battery, false imprisonment, official misconduct, active concealment of misconduct, intent to deceive, violations of §1983 and §1985, and malicious prosecution. Therefore, Sullenberger has the right to exclude any evidence related to the false panic alarm.

3) Absence a body camera policy, CGPD enabled the Defendants to commit violations with impunity, further bolstering Sullenberger's claims. After their negligent response, the officers had no reason to suspect that Sullenberger was involved in criminal activity, and a reasonable jury would conclude they lacked probable cause to arrest him. Despite Officer Flores verbally confirming on police radio that Sullenberger was the lawful resident of the property, the Officer Nunez and Officer Flores continued to detain and arrest him without legal justification.

4) Officer Puga's A-form did not allege any criminal activity on the part of Sullenberger, who was legally armed, not suspected of a crime and had not committed a crime, thus Officer Nunez and Officer Flores did not have the right to ask him to drop his weapon or produce identification.

5) *Graham v. Connor* provides a framework for examining the actions of Officer Nunez and Officer Flores. Sullenberger was legally armed and had the right to possess a firearm on the property, yet he was unjustly arrested. The officers' overreaction upon hearing Sullenberger announce his legal firearm, asking them to stay out of his property, resulted in baseless charges

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189 against him. Moreover, the use of excessive force during the arrest caused Sullenberger to suffer
190 severe, continuous and lasting harm.

191 6) The alleged fabrication of the A-form by Officers Nunez, Flores and Puga to create probable
192 cause for the arrest, raises serious concerns about the officers' conduct. The fact that
193 Sullenberger recently discovered his damaging FBI record that does not reflect his actions, and
194 that the officers have not been charged with official misconduct and perjury under Florida
195 Statute 837.02, is further evidence of the injustice in this situation.

196 7) Even more alarming is the continued intentional Tolling of IA Investigations. The first IA
197 complaint was submitted in March 7, 2018 and canceled without initiation and the second
198 complaint filed March 24, 2021 is still pending. The investigations conducted by the City IA
199 department would have yielded crucial evidence to support Sullenberger's innocence and
200 implicate the officers. Unfortunately, Sullenberger was denied two investigations that would
201 have uncovered important information for his defense. Despite the City's policy of 180 days to
202 conclude IA investigations, the City and the CGPD continue to delay Sullenberger's complaints.
203 The City has failed to complete the IA investigation within policy, as confirmed by the
204 Defendants in [DE64].

205 8) The Defendants cannot claim that there was probable cause for Sullenberger's arrest, as they are
206 estopped from relying on the fabricated probable cause. This fabricated evidence was
207 intentionally and knowingly included by the Defendants, which led to Sullenberger's arrest and
208 the prosecution.

209 9) Sullenberger has clearly stated claims and has taken legal action against the Defendants under
210 42 U.S. Code § 1983, which provides a legal remedy for individuals who have had their
211 constitutional rights violated by persons acting under color of law. The Defendants' willful

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actions in fabricating evidence, using excessive force, and engaging in malicious prosecution, constitute a clear violation of Sullenberger's constitutional rights.

10) Sullenberger has a strong case against all the Defendants under 42 U.S. Code § 1985, which prohibits conspiracies to interfere with civil rights. The Defendants' deliberate and coordinated actions with their supervisors and the City's counsel acting as the City, conspired to violate Sullenberger's rights, including the fabrication of evidence and the use of aggressive Rambo-Lawyering tactics, demonstrate a clear, deliberate conspiracy to interfere with Sullenberger's civil rights and Liberty.

II. The SAC is an impermissible shotgun pleading – False.

a. Sullenberger clearly states "Cause of Action" in the SAC and names the Defendants: Count I – Assault against Defendants Officer Flores and Officer Nunez. Count II – Battery against Defendants Officer Flores and Officer Nunez. Count III – False Imprisonment against all Defendants. Count IV – Section 1983, 1985 against all Defendants. "The City of Coral Gables the aforementioned Officers". (paragraph 30). Count V – Malicious prosecution: "the Defendant officers in their official capacity as police officers for the City, initiated a criminal prosecution against Sullenberger." The Malicious prosecution was led by the City's attorneys and JA Program.

III. The SAC fails to state a claim under either 42 U.S.C. § 1983 or § 1985 as to any defendant for any cognizable civil rights violation. – False.

a. The Defendants intentional misconduct, submitting a fabricated A-form, commencing prosecution against Sullenberger, misleading magistrates, causing a malicious prosecution, rendered devastating constitutional injury to Sullenberger and his family. Sullenberger's allegations, when proven, will demonstrate that the Defendants violated Sullenberger's Fourth Amendment right to be free from unreasonable seizures and his Fourteenth Amendment right

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to due process of law. Sullenberger's § 1983 claim was further aggravated by the City, Mrs. Ramos and Mr. Reyes, acting as Special Counsel for the City and GCPD, who was involved early on and in his own statement has indicated that he aggressively pursues maximum sentencing and punishment.

b. Without the CCTV evidence supporting Sullenberger's innocence, it is reasonable to assume that the City, prosecutor, Mrs. Ramos, Mr. Reyes, and Defendant officers would have aggressively pursued prosecution against Sullenberger, seeking two life sentences for crimes he did not commit, relying on Officer Nunez's and Officer Flores's sworn to A-form and Officer Puga's inadequate investigation.

c. Sullenberger is appalled by the Defendants, Mrs. Ramos and Mr. Reyes's ability to conceal the truth and lie without consequences in the state court and finds it incomprehensible that they can do so with impunity.

d. In fact, one of the primary reasons for bringing this civil action in federal court is to prevent them from using the same tactics here. The City and its counsel, engaged in Rambo-Lawyering tactics as seen in this letter (Exhibit B), and filing a "section 57.105 Motion for sanctions against the Plaintiff, Simon Sullenberger." (Exhibit C) This motion requested that the court award attorney's fees and costs under Florida Statutes 57.105, § 57.105 (2020), for allegedly frivolous filings made by Sullenberger. However, this motion was filed in bad faith to intimidate Sullenberger and evade accountability for the Defendants' malicious and unconstitutional behavior.

e. The Defendants' Motion for Sanctions against Sullenberger omitted crucial details, such as the officers arriving on foot, with no police cars, almost half an hour after the alarm, dressed in dark clothing, and failing to identify themselves. Despite Sullenberger communicating through the

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bushes not to enter the property, the officers entered without consent. Sullenberger followed the officers' requests. Then, Officer Nunez and Officer Flores failed to deescalate, resulting in Sullenberger being seriously injured.

f. Furthermore, the Defendants' Counsel took an outrageous step by attempting to strip Sullenberger of his beneficial expungement of criminal records in the state court case. It is a blatant violation of Sullenberger's legal rights and an attempt to impede his pursuit of justice for the harm inflicted upon him. The Defendants' Counsel stooped to a new low by requesting Judge Maria de Jesus Santovenia in the 11th Circuit to revoke Sullenberger's expungement on the very day he sought to dismiss the state case, informing the court of his new federal civil action. This behavior is reprehensible and undermines the very foundations of the justice system. Fortunately, the judge had the wisdom to inform the Defendants' Counsel, Ms. Christine Welstead, that she could file her Motion for Relief from the Expungement order in federal court.

g. It is pertinent to note that Sullenberger's counsel was in possession of a Subpoena for Deposition directing the appearance of Mr. Reyes on Wednesday, January 29, 2020 at 9:30am. The purpose of said deposition was to investigate Mr. Reyes' role in the offer made by SAO, wherein criminal charges against Sullenberger would be dropped in exchange for a waiver of civil rights to pursue legal action against the Defendants. Mr. Reyes, however, failed to attend the deposition, and provided a belated cancellation notice at 10:03am, 33 minutes late. Causing significant harm to Sullenberger's criminal prosecution, discovery in said prosecution and additional financial damages.

A. **The SAC fails to state a § 1983 claim against the city.** – False.

a. The City employed the Defendant officers acting within the scope of their employment, in their official capacity as Law Enforcement Officer, acting under color of state law, their negligent

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actions deprived Sullenberger's constitutional right to be free from seizure, compounded by their intentional misconduct, willful and wanton actions, and intentional harmful acts against Sullenberger.

b. If the City provided the requested information from IA, Sullenberger could have added:

1) Monell: Sullenberger has been unable to obtain information from the City that is necessary to pursue the claim. Sullenberger has only received a response from the City after filing a motion to compel [DE55] but has received nothing from the City's IA's.

2) Negligence: Respondeat Superior.

3) Failure to Train or Supervise

4) Municipal Liability/Official Policy or Custom: Ratification.

The City's JA Program, Mrs. Ramos and Mr. Reyes, violate the right to due process and administer "deals" to citizens that the City has unlawfully arrested, which violates Florida Rules of Professional Conduct 4-3.4(g) and 4-8.4(a)(c)(d). See Dr. Santamarinas Release Agreement (Exhibit D). The City maintained a policy not mandating beneficial body-worn cameras by its law enforcement officials. When City attorneys Mrs. Ramos and Mr. Reyes, viewed Sullenberger's CCTV, it's reasonable to conclude that they witnessed the officers' sworn testimony did not accurately reflect the CCTV's contents. At this point, it was incumbent upon them to inform the Prosecutor and IA. The City's IA Investigations violated policy for addressing use of force incidents is governed by Florida Statute § 943.1395, which mandates that law enforcement agencies develop and implement protocols for reporting, investigating, and monitoring such incidents involving officers' use of force. Despite Sullenberger's request for IA's findings, the City has failed to provide them. The City and CGPD violated policy and Florida Statute § 112.532, which outlines the protocol for

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disciplining, suspending, or terminating a law enforcement officer who has engaged in misconduct, including actions that violate an individual's constitutional rights. All parties involved in drafting the A-form are in violation of policy and Florida Statute § 837.055, which prohibits the making of false statements in official proceedings.

III.A.cont. In the Defendants Motion to Dismiss (pg.15 line.10): "Sullenberger has presented no facts establishing the city making a deliberate choice not to act despite this pattern of conduct." – False.

1. As Officer Puga testified in his deposition, he watched the CCTV with the City attorney, Mrs. Ramos. It could be reasonably concluded that they harbored doubts about the accuracy of Officers Nunez and Officer Flores testimony that Officer Puga swore to. Under Florida Statute section 837.02. makes it a crime for a law enforcement officer to knowingly make a false statement in an official written statement. Specifically, the statute prohibits any law enforcement officer from giving false information. Sullenberger was accused by Officer Nunez and Officer Flores of two counts attempted murder of a police officer with a firearm, the offense is classified as a first-degree felony under Florida law. A person convicted of these offense faces the potential of a two life imprisonment sentence. Because of the CCTV, the prosecution dropped all of Sullenberger's charges, further emphasizing the absence of probable cause. It is necessary to highlight the insufficiency of evidence by the Defendants to establish a reasonable belief that Sullenberger had committed 2 counts of the alleged offenses: Resisting Arrest with Violence, Battery on a Law Enforcement Officer, Resisting Officer with Violence/Firearm, Attempted Aggravated Battery on a Law Enforcement Officer, Attempted Murder 2nd Degree on a Law Enforcement Officer with a Deadly Weapon.

c. It cannot be disputed that Officer Nunez and Officer Flores lied. The CCTV clearly establishes the untruth of their statements. Officer Puga even subsequently conceded as much in his deposition. The City has stated that the fellow-officer rule protects Officer Puga even though

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Officer Nunez and Officer Flores lied. The City would rely on *Harder v. Edwards*, 174 So. 3d 524, 532 (Fla. 4th DCA 2015, to shield Officer Puga (and vicariously itself) from liability. An accurate reading of *Harder*, which does not involve the fellow-officer rule, shows that it easily is distinguishable and not that the City is mistaken. The Fourth District laid out the constitutional framework by which criminal defendants may seek to have a facially valid warrant voided. *Id.* at 533. Under that framework, the misrepresentations are removed from the affidavit and what remains is analyzed to determine the existence of probable cause. *Id.* at 532-533. If the false statements are necessary to establish probable cause, the warrant must be voided. *Id.* at 533 (citing *Terry v. State*, 668 So. 2d 954 (Fla. 1996) (additional citations omitted)). The court found that, after removing Harder's false statements, enough remained to support probable cause. *Id.* The Fourth District noted that in *Harder* there existed an "inescapable truth... that a crime did occur." *Id.* at 532 (emphasis in original). *Harder's* inescapable truth is absent from the case sub judice. Here, as shown by the CCTV, there was no crime. Officer Nunez and Officer Flores's lies are all that Officer Puga regurgitated and relied upon. Removing the lies, nothing remains. A far cry from the city's suggested reading of 'oh, its fine if police officers rely on lies in warrant affidavits,' *Harder* instead holds that, when there are misrepresentations in an a warrant affidavit, they must be extracted from the A-form and what remains must be analyzed to gauge probable cause. *Id.* at 532-533. Officer Puga's A-form, after excising the lies from Officer Nunez and Officer Flores, the A-form cannot shoulder such a burden.

d. Sullenberger's prosecution was solely based on the A-form, the Incident/ Investigation Report, and the Case Supplemental Reports, sworn on by Officer Nunes, Officer Flores and Officer Puga's. It is well-established that exculpatory information for the defense must be disclosed,

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including lies. The present argument is fortified by the fact that each officer reviewed the CCTV footage, and it is a matter of fact expressed in *Brady* that Officer Nunez, Officer Flores and Officer Puga, had a constitutional obligation to inform the prosecutor of the gross inaccuracy of their statements. In accordance with the Supreme Court's decision in *Brady v. Maryland*, prosecutors have a constitutional obligation to disclose exculpatory evidence to the defense, including evidence that may undermine the credibility of law enforcement.

e. The City attorney's watched the CCTV and did not acknowledge the officers' official misconduct.

f. When Officer Puga, the city attorney Mrs. Ramos, and Special Counsel to the City and CGPD Mr. Reyes became aware of such irrefutable evidence undermining the credibility of Officer Nunez and Flores, they were all obligated to disclose their discovery to the prosecutor, who must in turn disclose it to the defense. Failure to disclose such important evidence in violation of Sullenberger's due process rights should have resulted in a mistrial. Therefore, any evidence that could potentially exculpate Sullenberger or undermine the credibility of the prosecution's law enforcement officers must be disclosed to the defense in accordance with *Brady*.

g. The City failed to conduct a proper investigation, allowed officers to resign without taking disciplinary action, knowingly withheld important information, Told IA Investigations, and allowed officers to resign affording IA the excuse that 'they can't interview the officers anymore'.

h. Sullenberger will prove the city's policy or custom was the "moving force" behind the violation with the following elements:

1) Sullenberger's constitutional rights were violated:

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a. The Defendant officers submitting false testimony on their A-form to support a probable cause and arrest, is committing a violation of the Fourth Amendment.

2) The municipality had a custom or policy that constituted deliberate indifference to that constitutional right:

a. The City's JA Program failed to follow the City's procedure for investigating a crime and was instrumental in speaking with Officer Nunez and Officer Flores to determine which crimes to charge Sullenberger with. The City's JA Program pursued maximum punishment without affording Sullenberger with due process, violating his civil liberty. In addition, at a City Commissioners meeting the City's JA Program defamed Sullenberger during a presentation using fabricated A-forms to promote the JA Program. This has resulted in damage to his reputation, family's reputation, and good standing in the community.

3) The policy or custom caused the alleged violation:

a. Sullenberger argues that the City failed to properly train and supervise Officer Puga in conducting investigations is a proximate cause of the violation of Sullenberger's Constitutional rights. "Employees cause a constitutional injury as a result of the municipality's policy – or custom – based failure to adequately train or supervise its employees." *AFL-CIO v. City of Miami*, 637 F.3d 1178, 1188 (11th Cir. 2011).

b. Officer Puga, was newly hired by CGPD and lacked the necessary training or knowledge to properly investigate the allegations against Sullenberger. This lack of training and knowledge led to the false imprisonment, malicious prosecution and constitutional injury of Sullenberger.

c. The City and CGPD has been accused of arresting citizens without probable cause and lying on A-form, charging citizens for crimes they did not commit. Two published articles showing a recent pattern of behavior by The City's CGPD captured on CCTV and do not accurately reflect the officer's reports are: Ben Guerrero, a Police Officer and Mr. Gonzalez.

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B. The SAC fails to state a § 1983 claim against the defendant officers. – False

a. As the result of the Defendant officers intentional official misconduct, false imprisonment, malicious prosecution, and perjury, Sullenberger suffered: shame, embarrassment, great mental anguish, depression, anxiety, fear, and loss of capacity for the enjoyment of life, medical expenses, past and future lost wages, career advancement and the violation of his civil rights, due process rights, and other physical and mental injuries.

III.B.Cont. “In short, the CCTV footage does not support Sullenberger’s incomplete, self-serving and conclusory allegations suggesting that the Defendant officers lacked probable cause to arrest him or that he was “not resisting” arrest. – False.

- a. Florida Statute 776.051, provides that a person is justified in using reasonable force to resist an unlawful arrest, but only if the arresting officer uses excessive force or the arrest is unlawful.
- b. A person may resist an unlawful arrest, but only if the arrest is clearly unlawful and the amount of force used to resist the arrest is reasonable. CCTV does in fact support Sullenberger acted with reasonable care under the totality of the circumstances.
- c. Sullenberger was Tasered by Officer Flores for a continuous 16 Seconds, sustained Traumatic Brain Injury and a serious neck injury as a result of the assault, battery and excessive use of force committed by Officer Nunez and Officer Flores.
- d. Officer Nunez and Officer Flores were unable to deescalate a situation when no threat existed.
- e. Sullenberger’s CCTV proves the perjury committed by Officer Nunez and Officer Flores (Exhibit E).

III.B.Cont. Because Sullenberger has presented no facts establishing a lack of probable cause, Sullenberger’s § 1983 claim for false arrest against the Defendant Officers must be dismissed. – False.

- a. The grossly negligent response of the City, Officer Nunes, and Officer Flores to the panic alarm nullifies their disingenuous argument for probable cause, which is unfounded and a blatant misrepresentation of the facts. Sullenberger had already taken steps to cancel the alarm

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by communicating with his mother 25 minutes prior to the officers' arrival from a neighbor's phone, making their late response irrelevant for their probable cause argument and further highlighting their negligence.

b. In the criminal case brought by the Defendants and their Counsel, Mrs. Ramos and Mr. Reyes, the burden of proof for probable cause rested on the prosecution, which was required to prove beyond a reasonable doubt that Sullenberger was guilty of the crime they had been charged with. To meet this standard, the prosecution had to present evidence that convinced the jury, or in some cases, the judge, that there was no other reasonable explanation for the evidence than that Sullenberger had committed the crime. However, in the criminal case, the prosecution was not pursued further as Sullenberger presented CCTV that demonstrated the absence of probable cause, thereby rendering the panic alarm and fabricated A-form by the officers immaterial to the prosecution and civil action.

c. The Officers, arriving by foot, in the dark, wearing dark clothing, states they heard Sullenberger "through the bushes" informing them the homeowner was with a shotgun and not to enter the property. Sullenberger did not know they were police officers.

d. The Officers did not announce themselves as police officers and arrived without police cars.

e. Sullenberger was within his constitutionally protect rights to deny entry to the property to Officer Nunez, Officer Flores and anyone else.

f. Only the arresting officer can determine if probable cause existed at the time of the arrest and by removing Officer Nunez's and Officer Flores's fraudulent testimony, no crime occurred.

g. It was incumbent upon Lead Investigator Officer Puga, to contact the homeowner, and all witnesses. Officer Puga did not use proper investigative techniques violating CGPD policy.

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- 447 h. Sullenberger was arrested and seized without a reasonable investigation. The facts and
448 circumstances known to the arresting officers were insufficient to give rise to probable cause
449 and the court could recognize that a single credible eye witness would provide that it was
450 incumbent upon Officer Puga to further investigate whether there was probable cause to
451 believe a crime had been committed.
- 452 i. Sullenberger's neighbor, Dr. Santamarina, was arrested approximately four hours later by the
453 City and CGPD, warrantless and without probable cause. Later accepted a "deal" from the
454 City, Mrs. Ramos, and Mr. Reyes that the Defendants would drop his charges if Dr.
455 Santamarina would waive his constitutionally protected right to a civil action against the
456 Defendants. A similar deal was offered to Sullenberger.

457 **III.B.Cont. Sullenberger bears the burden of proving that the arrest was unreasonable.**

- 458 a. Sullenberger submitted the Affidavit of expert witness Andrew Scott as an exhibit with the
459 SAC. His testimony clearly establishes Sullenberger's arrest was unreasonable and used
460 excessive force.
- 461 b. In order to determine whether an arrest is reasonable under the Fourth Amendment, courts will
462 consider whether the arresting officer had probable cause to believe that a crime had been
463 committed. The burden of proof may shift back to the prosecution if the defendant
464 (Sullenberger) can demonstrate that the officer used excessive force during the arrest, which
465 would render the arrest unreasonable.
- 466 c. In *Johnson v. Scott*, a 2012 case from the Northern District of Florida, the court held that the
467 burden of proof shifts to the prosecution if the defendant (Sullenberger) can demonstrate that
468 the arresting officer used excessive force that was clearly unreasonable under the

circumstances. Sullenberger's CCTV shows the Officer Nunez and Officer Flores used excessive force for the situation.

- d. If you remove the officers, no crime had been committed, the most serious crimes capture on the CCTV could be argued was committed by Officer Nunez and Officer Flores.

III.B.Cont. The reasonableness of an arrest is, in turn, determined by the presence or absence of probable cause for the arrest. Defendant left "citations omitted". – False.

- a. It has been affirmed in many court decisions, including the U.S. Supreme Court decision in Beck v. Ohio, 379 U.S. 89 (1964), which held that an arrest without probable cause violates the Fourth Amendment. Another important case is Illinois v. Gates, 462 U.S. 213 (1983), which established a totality of the circumstances test for determining whether probable cause exists. The Defendants lack sufficient probable cause or legal justification for the arrest.

III.B.Cont. If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may without violating the fourth amendment, arrest the offender.

- a. It is important to note that the officer must follow proper procedures during the arrest, if an officer violates procedures, the arrest may be considered unreasonable and a violation of the individual's Fourth Amendment rights. The arrest made by the Defendants was unjustified as the officers did not meet the criteria for an arrest, which includes witnessing a crime or having probable cause to believe that Sullenberger committed a crime. The Defendants only created probable cause hours after the arrest in an effort to evade civil action, violating 18 U.S.C. § 241. This lack of probable cause will render Sullenberger's arrest invalid, and any evidence resulting from his arrest will have to be suppressed, including the panic alarm.

The SAC fails to state a §1985 against all Defendants. – False.

- f. Sullenberger raises claims pursuant to § 1985, citing the concerted and colluded efforts of the Defendant officers, their supervisors, Mrs. Ramos and Mr. Reyes to write a fabricated A-form.

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- g. Sullenberger believes that Mr. Reyes, while acting in his official capacity, on behalf of the City, used his extensive legal expertise to help create a probable cause and assisted in choosing the charges placed on Sullenberger. The City carries out these acts through the JA program.
- h. Sullenberger cites 42 U.S.C. § 1986, which imposes liability on individuals who possess knowledge of wrongdoing that is prohibited under 42 U.S.C. § 1985, and it is plausible that despite having spoken to the officers and reviewed the CCTV footage, Mr. Reyes did not take appropriate actions to remedy the situation even though it is reasonable to conclude that he could have determined that the officers' statements were lies.
- i. Sullenberger is invoking § 1985 as a basis for holding The City, the Defendants, Mrs. Ramos and Mr. Reyes accountable for their alleged actions. Specifically, Sullenberger argues that the City attorneys had knowledge of wrongs prohibited under § 1985 and conspired with the Defendants by allegedly creating false probable cause and fabricating the A-form. Sullenberger contends that Mr. Reyes and others conspired to deprive him of his right to due process, civil rights, equal protection of the law.
- j. Furthermore, the City, as the employer of Officers Nunez, Flores, and Puga, is vicariously liable for their actions. As a result, Sullenberger argues that Mrs. Ramos and Mr. Reyes, acting on behalf of the City, could also be held vicariously accountable for false imprisonment and may also be liable for the alleged conspiracy of committing official misconduct to aid the City in avoiding a civil action, contributing to a lengthy malicious prosecution against Sullenberger.
- k. Sullenberger accuses the City and Defendant police officers of having malicious intent to arrest him after an extended detention without probable cause. Officer Puga, was directed by his supervisors to write his A-form without conducting a thorough investigation, in violation of CGPD protocol. Each of these accusations, if proven, would further impugn the validity of

Sullenberger's arrest. The federal court should revisit the claims dismissed without prejudice in the state court, given that the Defendants intentionally misled magistrates with fabricated affidavits. Such purported misconduct demands appropriate sanctions from the court, and Sullenberger has ample evidence to substantiate these allegations.

1. The Defendants are accused of initiating a criminal proceeding against Sullenberger after wrongfully arresting him and submitting fabricated A-form's to the SAO. Inevitably, the charges were dismissed on account of Sullenberger's innocence, indicating that the prosecution was initiated without probable cause.
- m. Inconsistencies between the A-form and the CCTV footage support the allegation of a colluded effort to fabricated probable cause by the Defendants. Sullenberger has plausibly asserted that the Defendants, their supervisors, and counsel Mrs. Ramos and Mr. Reyes, acted with malice, deliberately fabricating A-form in order to conceal their use of excessive force and to intentionally deceive the State Attorney's Office and the court.
- n. Sullenberger's claims are further bolstered by the 'Continuing Violation' doctrine. Under this doctrine, each time Sullenberger is denied employment or experiences other negative consequences as a result of the false imprisonment and damaging FBI record, a new violation of his rights occurs. As a result, the statute of limitations may not bar Sullenberger from bringing a claim based on the ongoing, continuous, devastating, and life altering harm.
- o. A recent example of a new violation concerns Sullenberger's application for a Top-Secret Security Clearance, which was denied following an interview with the investigator. During the interview, the investigator inquired about Sullenberger's arrest for attempted murder of two police officers. It could be reasonably asserted that Sullenberger was deemed unsuitable for the clearance due to his unwarranted and damaged FBI record.

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- p. In this case, the "harm rule" may apply, as Sullenberger could argue that the Defendant officers acted wrongfully and negligently by fabricating their A-form, and that this fabrication caused significant harm to Sullenberger's FBI record, pursuing set goals, which is affecting his ability to seek employment.
- q. Under the harm rule, Sullenberger may be able to recover damages for the harm they suffered, even if the harm is not physical in nature, as long as the harm was caused by the Defendant's intentional wrongful conduct. Specifically, Sullenberger has suffered serious harm to his reputation, which encompasses damage to his standing in the community, loss of employment opportunities, and other consequences arising from the damaged arrest record.
- r. It is noteworthy that Officer Puga and the City's attorney, Mrs. Ramos, reviewed the CCTV footage together, and it could be reasonably suggested that it raised doubts about the accuracy of sworn statements made by Officers Nunez and Officer Flores. This evidence could be considered Brady material and further suggests the City's deliberate attempt to conceal perjury by Officer Nunez and Officer Flores further strengthening Sullenberger's Section 1983 and 1985 claims. Mrs. Ramos likely determined the CCTV footage contained exculpatory evidence that exonerated Sullenberger and had a constitutional obligation to disclose it to the prosecutor in accordance with the landmark case of *Brady v. Maryland*.
- s. In light of the aforementioned conduct by the Defendants, Sullenberger has made a credible assertion that the creation of fabricated A-form, the fabrication of probable cause, and the malicious prosecution have caused, and are likely to continue causing, significant harm to Sullenberger, his liberty and pursuit of happiness.

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t. i.e. There was a massive cover-up attempt to absolve the police officers and the City of any liability for their wrongdoing, which ultimately has caused significant harm to the integrity of the CGPD, Sullenberger, his family and the neighbor Dr. Santamarina and his family.

IV. State Tort claims for arrest, battery, false imprisonment, and malicious prosecution all warrant dismissal. – False.

a. There was not a probable, or arguable probable cause to arrest Sullenberger. Florida Statue 901.151 provides a person may be detained where the officer has reasonable grounds to believe the person has committed, is about to commit or committed a crime. At the time the officers were unlawfully and without permission in the enclosed yard of Sullenberger's residence, no crime had been committed, there was no reasonable basis to believe a crime was about to be committed, or that Sullenberger was committing a crime.

A. The assault and battery claims involve acts which are incidental to Sullenberger's arrest and do not give rise to independent Torts. – False.

a. An arrest causing injury to the head is excessive force and does in fact give rise to independent Torts. Sullenberger sustained physical head and neck injuries, as well as psychological injuries as a direct and proximal result of Officer Nunez and Officer Flores assault and battery.

b. The Eleventh Circuit has held in *Priester v. City of Riviera Beach*, 208 F.3d 919, 926 (11th Cir. 2000), that a reasonable officer would know that the use of force that causes injury, particularly head injuries, is excessive and not justified.

c. Sullenberger sustained neck injury including bilateral uncovertebral hypertrophy, with severe left neuroforaminal narrowing. Spondylosis to the cervical region, severe concussion with loss of consciousness, whiplash and facial injury.

d. Sullenberger suffers from Post-traumatic stress Disorder, Major Depressive Disorder and Generalized Anxiety Disorder, the cause of which resulted from the incident involving the Defendants on or about on December 2, 2017.

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e. Sullenberger suffers from blurred and reduced vision in the left eye.

B. The false imprisonment claims as to the Defendant Officers have already been adjudicated on the merits and are barred as a matter of law. – False.

a. The counts against the Defendants were not dismissed with prejudice and the ruling was made without using factual evidence. On or about December 2, 2017 Officer Nunez and Officer Flores acted in bad faith and with malicious purpose and in a manner exhibiting wanton and willful disregard for Sullenberger's rights and safety when they falsely arrested him without probable cause or legal justification in violation of Fla.Stat.768.28(9)(a), caused severe and lasting injury and compounded their lies into the A-form that Officer Puga prepared and the City used for their 3 year long malicious prosecution.

b. Sullenberger argues that the Defendants used deceit and fraudulent documents in the court. This should require sanctions from the court, and that Sullenberger should not be penalized for seeking justice in a federal court where the Defendants would not be able to continue their malicious tactics with impunity and complete disregard for the truth. As JUSTICE KENNEDY posits, ante, one of the primary purposes of § 1983 was to provide a remedy "against those who representing a State in some capacity were unable or unwilling to enforce a state law." *Monroe v. Pape*, 365 U. S., at 175-176

c. The instant case was filed independently, and the federal court has jurisdiction to hear the case, it should survive a motion to dismiss. Sullenberger can show that the false testimony was material to the state court's judgment and argues that the preclusive effect of the state court's judgment should be non-existent in the federal court.

d. Sullenberger initiated a federal lawsuit for the same state tort claims, finding it necessary for a federal judge to hear the case because he believed that the state court was grossly overlooking the facts of the case. The 11th Circuit Court was ignoring the material facts causing unfair

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prejudice to Sullenberger and his defense. The CCTV captured the assault, battery and perjury committed by the Defendant officers, yet not a single Circuit judge questioned the perjury or official misconduct by the Defendants. In amazement, the City and officers representation by Mr. Reyes, a former 11th Circuit Court judge and a close friend of Judge Altfield, who did not recuse himself from the case, had led to unfair rulings, including the quashing of Mr. Reyes' subpoena related to his use of the SAO to waive Sullenberger's civil rights. In response to these actions, Sullenberger's counsel filed a motion to have the case removed from the 11th Circuit Court due to the obvious continuing bias.

e. The City is still Tolling and withholding important investigative matters benefiting Sullenberger. The allegations, when proven, would demonstrate the Defendants purposely misled magistrates using fabricated A-form's and continued their malicious prosecution and abuse with impunity and complete disregard for the truth.

f. "Abuse occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them." *Independent Oil and Chemical Workers of Quincy, Inc. v. Procter Gamble Mfg. Co.*, 864 F.2d 927, 929 (1st Cir. 1988); see also *Anderson v. Cryovac, *1118 Inc.*, 862 F.2d 910, 923 (1st Cir. 1988). -- Despite what appeared to be a clear disregard for the facts of the case by the state court, the judge did make a ruling that allowed Sullenberger to amend their complaint in order to address any deficiencies in their claims.

C. The false imprisonment claims are subject to dismissal where the Defendant officers had probable or arguable probable cause to arrest Sullenberger. – False.

a. The state could not prove a prima facie case of guilt. The arrest was without probable cause. The Defendants attempt to supply facts and suggest the Defendants had probable cause is their argument. However, if you remove each lie in their arrest report, nothing remains, and the A-form is unenforceable. At the time of arrest the officers unlawfully and without permission entered the enclosed yard of Sullenberger, no crime had been committed, and Sullenberger

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committed no crime. *Review Tillman – series – State and Federal Cases, argument of exigent circumstances.*

D. **The SAC fails to state a claim of malicious prosecution as to any named Defendant.** – False.

- a. Malicious Prosecution is against the Defendants collectively.
- b. The pursuit of a malicious prosecution against Sullenberger was committed by all Defendants.

V. **The Defendant Officers are Entitled to statutory and qualified immunity as to all claims brought against them.**

- a. This immunity is not absolute, and it is overcome in this situation where the Defendants have violated clearly established constitutional rights. Officers Nunez and Officer Flores used excessive force, fabricated evidence, withheld exculpatory evidence, suppressed misconduct, conspired with supervisors and city attorneys to cover up misconduct, falsely arrested Sullenberger in violation of the Fourth Amendment and are not entitled to qualified immunity.
- b. Officer Puga actively participated in and contributed to Sullenberger's constitutional injuries by not conducting a thorough investigation, suppressed misconduct and violated *Brady* by failing to disclose exculpatory evidence for Sullenberger's defense.

A. **The Defendant officers are entitled to statutory and qualified immunity as to all claims brought against them.** – False.

- a. Police officers who lie should not be protected by qualified immunity and should be subject to a thorough investigation. In this case, it is important to hold the City, Officers Nunez, Flores, and Puga accountable for their possible multiple Florida Department of Law Enforcement ("FDLE") violations, as evidenced in (Exhibit F).
- b. All are equal under the color of law including said police officers that fabricate A-form and were willing to pursue prosecution with the possibility of Sullenberger receiving two life sentences with full knowledge that their affidavit sworn to statements are lies.

- c. Sullenberger has alleged facts that, if proven, would demonstrate that the Defendants acted with deliberate indifference to his constitutional rights. Specifically, Sullenberger alleges that the Defendants created a falsified probable cause and used and submitted false arrest reports, which misled magistrates and the court. Such conduct, if proven, would constitute a violation of Sullenberger's clearly established constitutional rights and remove the protection of qualified immunity for the Defendants.
- d. The Defendant's use of force, including a failed hip toss maneuver and a violent throw into the sidewalk, constitutes a violation of Sullenberger's clearly established Fourth Amendment rights. As established by the Supreme Court in *Graham v. Connor*, 490 U.S. 386, 395 (1989), the use of excessive force during an arrest is a violation of the Fourth Amendment's protection against unreasonable seizures.
- e. Moreover, the Eleventh Circuit has held in *Priester v. City of Riviera Beach*, 208 F.3d 919, 926 (11th Cir. 2000), that a reasonable officer would know that the use of force that causes injury, particularly head injuries, is excessive and not justified. Here, Sullenberger has presented evidence that the Defendant used excessive force, inflicting serious injuries including a concussion, facial injuries, and a serious lifelong neck injury. A reasonable officer would have known that the use of a retaining wall as a pivot point increased the force in a manner that was excessive and caused serious injury.
- f. Unconstitutional taser usages by Officer Flores could remove Qualified Immunity and does not fall under harmless error. Officer Flores is accused of using excessive force against the plaintiff, who was not violent and did not pose an immediate threat to Officer Nunez, Officer Flores, or anyone else. Despite this, Sullenberger was shot with taser darts by Officer Flores at point blank range, tasered 3 times consecutively for a total of 16 seconds and given no warning

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beforehand. The first shot was fired while Sullenberger was standing, and the second two shots were fired while the plaintiff was lying face down on the sidewalk. These actions could be argued to be objectively unreasonable and went beyond what was necessary to maintain safety, violating the Sullenberger's rights, strengthened by the fact that only Officer Flores used her taser and Officer Nunez did not feel the need for using a taser weapon.

g. Most recently, the Tenth Circuit (Judges Kelly, Brorby and Gorsuch) concluded that the use of a taser gun like the one at issue here "against a non-violent misdemeanor who appeared to pose no threat and who was given no warning" was unconstitutional excessive force under *Graham*, for which the officer did not enjoy qualified immunity. *Cavanaugh v. Woods Cross City*, 625 F.3d 661, 663-65 (10th Cir. 2010). Citing our decision in *Bryan*, Judge Kelly wrote:

"Although Tasers may not constitute deadly force, their use unquestionably "seizes" the victim in an abrupt and violent manner. Accordingly, the "nature and quality" of the intrusion into the interests of Ms. Cavanaugh protected by the Fourth Amendment was quite severe."

"a stun gun inflicts a painful and frightening blow, which temporarily paralyzes the large muscles of the body, rendering the victim helpless."); *Cavanaugh v. Woods Cross City*, 2009 WL 4981591, at *5 (D.Utah Dec.14, 2009)

h. "I therefore conclude that use of a Taser constitutes an intermediate level of force and a significant intrusion on a victim's Fourth Amendment rights."); *McDonald v. Pon* 2007 WL 4420936, at *2 (W.D.Wash. Dec.14, 2007)

i. Therefore, the Court could find in favor of Sullenberger and remove Officer Flores qualified immunity in this case, as their actions should be seen as a violation of his constitutional rights. Sullenberger cites the case of *Bryan v. McPherson*, 590 F.3d 767 (9th Cir. 2009)

The plaintiff, *Carl Bryan*, was a passenger in a car that was pulled over for a traffic violation. During the stop, Bryan refused to comply with the police officer's supervisors, and was eventually removed from the car and tasered three times in quick succession. Bryan suffered significant injuries as a result. The court found that the use of the taser in these circumstances was excessive and violated Bryan's Fourth Amendment rights. The court also

held that the police officer was not entitled to qualified immunity, as it was clearly established at the time of the incident that the use of a taser in these circumstances was unconstitutional.

VI. Claim for punitive damages must be stricken and dismissed. – False.

a. The Defendants can all be held liable for punitive damages because their actions were willful, malicious, and exhibited a reckless disregard for Sullenberger's safety and Constitutional rights.

A. The city is immune from Sullenberger's punitive damage claim. – False.

a. The actions of the City and its employees, acting under the color of law, Mr. Reyes, Mrs. Ramos, OFFICER NUNEZ, OFFICER FLORES, OFFICER PUGA AND their supervisors were intentional, are continuing, and they acted with knowledge that their conduct would likely cause serious harm to Sullenberger. Their conduct was egregious and went beyond mere negligence or a mistake, i.e. a willful cover up, Violating 18 U.S.C. § 241 and 242.

b. Savino v. City of New York, 331 F.3d 63 (2d Cir. 2003) demonstrates that a city can be held liable for punitive damages.

CONCLUSION

Sullenberger filed this federal civil action to bring attention to the Defendants willingness to violate his civil liberty with malicious intent and respectfully requests that this Court deny the Defendants' Motion to Dismiss the SAC. Sullenberger has alleged sufficient facts to state claims for violations of his constitutional rights, and these claims are supported by strong evidence of the Defendants' malice and official misconduct. The Defendants' attempt to evade liability through legal technicalities must not be countenanced. Sullenberger has suffered serious and permanent harm as a result of the Defendants' actions, and respectfully seeks redress for the seizure and injuries he has endured. Sullenberger urges the Court to hold the Defendants

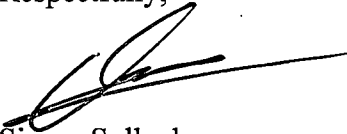
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734 accountable for their unconstitutional behavior and to allow this instant case to proceed to

735 Discovery.

736 THEREFORE, it is respectfully submitted that the Defendants Motion to Dismiss the SAC should
737 be denied.

738 Respectfully,



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